

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RAYTHEON COMPANY,

Plaintiff,

v.

CRAY, INC.,

Defendant.

ORDER

18-cv-318-wmc

The court is in receipt of the parties' respective statements on the remaining issues in this case. (Dkt. ##467, 468.) Plaintiff Raytheon maintains that all remaining issues in this case have been resolved and the court should enter final judgment. For its part, defendant Cray indicates that the only remaining issues are presented in its to-be-filed motion for attorney's fees and costs under 35 U.S.C. § 285. Since neither party seeks a ruling on Cray's remaining invalidity counterclaims of U.S. Patent Nos. 7,475,274 and 8,190,714 (counterclaims 5 and 6), the court will dismiss those claims without prejudice to either party -- a reasonable response given the finding of noninfringement -- and direct entry of final judgment as to *all* claims and counterclaims. *See Medicines Co. v. Mylan, Inc.*, 853 F.3d 1296, 1302 (Fed. Cir. 2017) ("Under *Cardinal Chemical Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 99 (1993), a finding of noninfringement cannot moot a counterclaim of invalidity, but we retain the discretion to limit the grounds upon which appeals are decided.").

Consistent with the above, Cray may still file its post-judgment motion for attorney's fees under Federal Rule of Civil Procedure 54(d). Cray requests that it have 40

days from entry of judgment to file its submission, with Raytheon's response due 40 days after that, and Cray's reply due 20 days after that. While Raytheon does not object to this request, such a lengthy briefing schedule raises red flags for the court. There is no reason why such time should be required. Moreover, the proposed briefing schedule suggests that the parties intend to file unnecessarily voluminous submissions. As such, while the court will extend the briefing schedule beyond the 14 days contemplated under Rule 54(d), Cray's motion for attorney's fees is due on or before May 15, 2019, with Raytheon's response due June 5, 2019, and any reply due June 14, 2019.

Entered this 24th day of April, 2019.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge